

STATE OF MICHIGAN

BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Referee David G. Myers  
Sanilac County Friend of the Court  
P. O. Box 187  
Sandusky, MI 48471

Docket No.  
Formal Complaint No. 86

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ANSWER TO COMPLAINT

NOW COMES Respondent Attorney David G. Myers (P30057) and makes

Answer to the Complaint filed against him dated June 15<sup>th</sup>, 2010 by the

Michigan Judicial Tenure Commission ( "Commission" ), Formal Complaint

No. 86, as follows:

1. Respondent Attorney David G. Myers (P30057) admits that he is employed as both Sanilac County Family Court Referee and Sanilac County Friend of the Court and has been serving in that capacity in Sandusky, Michigan since appointment November 1<sup>st</sup>, 1999. Respondent has been a licensed Attorney in the State of Michigan since approximately June of 1979. Respondent's misdemeanor violation of the law on September 23<sup>rd</sup>, 2009 was not committed in the course of his employment for Sanilac County and in fact was committed in Tuscola County, Michigan.

2. Respondent Attorney David G. Myers (P30057) admits that as a referee, he is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

3. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 3 of the Commission's Formal Complaint No. 86.
4. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 4 of the Commission's Formal Complaint No. 86.
5. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 5 of the Commission's Formal Complaint No. 86.
6. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 6 of the Commission's Formal Complaint No. 86.
7. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 7 of the Commission's Formal Complaint No. 86.
8. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 8 of the Commission's Formal Complaint No. 86.
9. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 9 of the Commission's Formal Complaint No. 86.
10. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 10 of the Commission's Formal Complaint No. 86.
11. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 11 of the Commission's Formal Complaint No. 86.
12. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 12 of the Commission's Formal Complaint No. 86.
13. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 13 of the Commission's Formal Complaint No. 86.
14. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 14 of the Commission's Formal Complaint No. 86.
15. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 15 of the Commission's Formal Complaint No. 86.

16. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 16 of the Commission's Formal Complaint No. 86.

17. Respondent Attorney David G. Myers (P30057) admits the allegations set forth in Paragraph 17 of the Commission's Formal Complaint No. 86.

18. Respondent Attorney David G. Myers (P30057) admits that on January 29<sup>th</sup>, 2010 Judge John T. Connolly sentenced Respondent to pay costs and fines ( paid January 29<sup>th</sup>, 2010 ), attend Alcoholics Anonymous ( attended January 1<sup>st</sup>, 2010 through present date ), and serve probation for three months in relation to the offense. Respondent Attorney David G. Myers (P30057) successfully completed probation and received Order of Discharge from probation for the offense April 29<sup>th</sup>, 2010.

- a) Respondent Attorney David G. Myers does not admit that his conduct described in the above paragraphs constitutes misconduct in office for the reason the conduct complained of did not occur in the course of his employment nor in the County of Sanilac, Michigan where he is employed as a Family Court Referee.
- b) Respondent Attorney David G. Myers does not admit that his conduct described in the above paragraphs constitutes conduct clearly prejudicial to the administration of justice for the reason the conduct complained of did not occur in the course of his employment nor in the County of Sanilac, Michigan where he is employed as a Family Court Referee.
- c) Respondent Attorney David G. Myers does not admit that his conduct described in the above paragraphs constitutes a failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved for the reason that the conduct complained of did not occur in the course of his employment as a Family Court Referee and for the reason that Respondent Attorney is not an elected Judge so as to be a member of the judiciary.

- d) Respondent Attorney David G. Myers admits that his conduct described in the above paragraphs constitutes irresponsible or improper conduct but not that said conduct erodes public confidence in the judiciary for the reason that the conduct complained of did not occur in the course of his employment as a Family Court Referee and for the reason that Respondent Attorney is not an elected Judge so as to be a member of the judiciary. Respondent Attorney admits that the conduct complained of violates a criminal law of the State of Michigan and constitutes grounds for discipline pursuant to MCR 9.104(A)(5) and is in violation of the Code of Judicial Conduct, Canon 2A;
- e) Respondent Attorney David G. Myers admits that his conduct described in the above paragraphs constitutes conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- f) Respondent Attorney David G. Myers admits that his conduct described in the above paragraphs constitutes a violation of a criminal law of the State of Michigan, contrary to the Code of Judicial Conduct, Canon 2B; and
- g) Respondent Attorney David G. Myers admits that his conduct described in the above paragraphs constitutes conduct which could expose the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2).

Dated: \_\_\_\_\_

6/24/10



David G. Myers ( P30057 )  
Respondent Attorney  
In Pro Per  
320 W. Bush St.  
Caro, Michigan 48723  
(989) 673-4659  
Office (810) 648-4866

## AFFIRMATIVE DEFENSES

### 1. EQUAL PROTECTION OF THE LAW

Prosecution of Respondent Attorney by filing of Formal Complaint herein pursuant to MCR 9.209 without first offering Respondent Attorney the opportunity to avoid formal prosecution by successfully completing some form of contractual probation ( MCR 9.114(B)) and/or some form of monitoring with conditions imposed by the Commission pursuant to MCR 9.207(B) denies Respondent Attorney David G. Myers Equal Protection of the law.

The Fourteenth Amendment to the U.S. Constitution, among other things, protects individuals against any state action that would " Deny to any person within its jurisdiction the equal protection of the laws." This means that similarly situated persons should be treated similarly under the law.

The Michigan Attorney Grievance Commission resolves most attorney convictions of impaired driving without public disciplinary action, such as by contractual probation, admonitions, closings, or dismissals. ( Impaired Driving Convictions and the Disciplinary Process, By Cynthia C. Bullington, Michigan Bar Journal, December 2009). In cases involving attorney convictions of first offense impaired driving not resolved without public disciplinary action by admonition, closing, or dismissal; the Michigan Attorney Grievance Commission will offer the responding attorney the opportunity to avoid formal prosecution by successfully completing some form of contractual probation pursuant to MCR 9.114(B).

The Michigan Judicial Tenure Commission ( through it's Executive Director ) advised Respondent Attorney that contractual probation and/or monitoring with conditions were not available as an alternative to prosecution by formal complaint in regard to these proceedings.

When any Michigan attorney convicted of a first offense impaired driving would be offered the opportunity to avoid formal disciplinary action by successful completion of contractual probation and/or monitoring but for the fact that the attorney involved is also a referee, similarly situated persons are not being treated similarly.

## 2. LACHES / ESTOPPEL

Prosecution of Respondent Attorney by filing of formal complaint by the Michigan Judicial Tenure Commission at this time should be barred by the equitable doctrine of Laches and or Estoppel pursuant to Michigan Court Rule 9.205 (B)(3) for the reason that the conduct complained of in Michigan Judicial Tenure Commission Formal Complaint No. 86 occurred on September 23<sup>rd</sup>, 2009 while the commission's complaint was not filed until on or about June 14<sup>th</sup>, 2010.

Michigan Court Rule 9.205 (B)(3) provides that, " In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter."

Since Respondent Attorney David G. Myers has already paid Court costs and fines totaling over \$500, Attorney Fees totaling over \$3000, Secretary of State fees and penalties totaling over \$2000, and successfully completed all of the terms of his District Court Probation for the offense complained of; and since Respondent Attorney is the only Family Court Referee in Sanilac County, Michigan with referee hearings presently scheduled through August of 2010; and since Respondent Attorney has also recently paid the fees to renew his Michigan Court Reporting/Recording certificate ( CEO #7937 ) required for performance of Referee duties for the next year; Respondent Attorney has been prejudiced by the delay in pursuing this matter and would be unfairly prejudiced by again being punished and/or "rehabilitated" for the conduct complained of.

### 3. SATISFACTION

Respondent Attorney David G. Myers has already satisfied the requirements necessary to preserve an independent and honorable judiciary, to preserve the integrity of the judicial system, to enhance public confidence in that system, and to protect the public, the courts, and the rights of judges in the most expeditious manner that is practicable and fair pursuant to Michigan Court Rule 9.200 based on the Michigan Attorney Grievance Commission vacating request for investigation in regard to the conduct complained of herein in AGC File No. 0172/10, Respondent Attorney David G. Myers (P30057) successfully completing all of the terms of probation and receiving an Order of Discharge from probation in regard to the conduct complained of herein in Tuscola County District Court File No. 2009-1198-SD, and Respondent Attorney refraining from the use of alcohol since September 23<sup>rd</sup>, 2009 and attending and continuing to attend Alcoholics Anonymous on a twice weekly basis since January 1<sup>st</sup>, 2010.

WHEREFORE, Respondent Attorney would respectfully request that Formal Complaint No. 86 against him be dismissed herein and/or that the Formal Complaint No. 86 be held in abeyance pending successful completion / satisfaction of conditions imposed by the Judicial Tenure Commission, which may include a period of monitoring, pursuant to Michigan Court Rule 9.207 (B)(3).

Dated: 6/24/10



David G. Myers ( P30057 )

Respondent Attorney

In Pro Per

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